

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS JR. #12840-078	§	
v.	§	CIVIL ACTION NO. 6:11cv414
		Crim. No. 6:06cr27
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Simon Balderas, proceeding through counsel, filed this motion to vacate or correct his sentence under 28 U.S.C. §2255, complaining of the validity of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Balderas was convicted in a jury trial on 24 counts, including charges of conspiracy to distribute drugs, possession with intent to distribute drugs, and possession of a firearm in the furtherance of a drug trafficking crime. After re-sentencing upon remand from the Fifth Circuit, Balderas received a sentence of 922 months in prison.

In his motion to vacate or correct sentence, Balderas raised 25 grounds for relief, centering around allegations of ineffective assistance of counsel prior to trial, at trial, at sentencing, and on appeal. The Government was ordered to respond to the motion, and Balderas filed a reply to this response.

After review of the pleadings and the trial records, the Magistrate Judge issued a lengthy and comprehensive Report recommending that the motion to vacate or correct sentence be denied. The Magistrate Judge also recommended that Balderas be denied a certificate of

appealability *sua sponte*. Balderas has not filed objections to this Report; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and records in this cause, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 16) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence is hereby DISMISSED with prejudice. It is further

ORDERED that the Movant Simon Balderas Jr. is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 15th day of August, 2012.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**